

APPENDIX I

AGENCIES WITH JURISDICTION OVER BOATING OR TOMALES BAY

The following agencies have jurisdiction in all or part of Tomales Bay. The public agencies primarily involved with vessel management, habitat, and water quality issues in Tomales Bay include: CCC, DBW, DFG, CDPH, SLC, CSP, GGNRA, GFNMS, PNRS, SF RWQCB, and Tomales Bay State Park, together, protect approximately 50% of the 70 miles of shoreline in Marin County and provide most of the recreational opportunities and shoreline access to Tomales Bay. This section also addresses the particular issues in Tomales Bay of vessel use, habitat disturbance, and water quality and how they are regulated by various agencies.

A. California Coastal Commission (CCC)

The CCC has the primary responsibility for implementation of the California Coastal Act and has been designated the State coastal zone planning and management agency for any and all purposes and may exercise any and all powers set forth in the Federal Coastal Zone Management Act of 1972 (16 U.S.C. §1451, et seq.) and any amendments thereto or other federal laws that relate to the planning or management of the coastal zone. The California Coastal Act mandates the protection and restoration of coastal waters. The CCC certifies local coastal programs and approves coastal development permits, energy projects, and federal projects within the Coastal Zone in accordance with water quality policies in the California Coastal Act. The CCC's federal (CZMA) authority includes review of all federal agency activities and authorizations in or affecting the coastal zone, including, but not limited to, management plans. The CCC protects water quality in its function of permit authority over development that generates runoff, creates spills, or otherwise affects water quality. The CCC also implements educational and technical assistance programs and coordinates with other agencies to address land-use and development activities that may generate polluted runoff.

The CCC's enforcement tools include cease and desist and/or restoration orders. Cease and desist orders are used by the Commission to halt ongoing violations, to order removal of unpermitted development, and to force developers to comply with the permit process. Restoration orders are used to bring about the removal of unpermitted development and/or restoration of damaged coastal resources. The Commission can also litigate resolution of violations with the assistance of the Attorney General's Office.

The CCC, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Tomales Bay is part of the Coastal Zone and falls under Marin County's certified Local Coastal Program (LCP). The primary goal of the LCP is to ensure that the local government's land use plans, zoning ordinances, zoning district maps, and implemented actions meet the requirements of, and implement the provisions and policies of the California Coastal Act at the local level. Following adoption

by a city council or county board of supervisors, an LCP is submitted to the CCC for review for consistency with Coastal Act requirements. After an LCP has been finally approved, the CCC's coastal permitting authority over most new development is transferred to the local government, which applies the requirements of the LCP in reviewing proposed new developments. The CCC retains permanent coastal permit jurisdiction over development proposed on tidelands, submerged lands, and public trust lands, and the CCC also acts on appeals from certain local government coastal permit decisions. The CCC reviews and approves any amendments to previously certified LCPs.

B. California Department of Boating and Waterways (DBW)

Navigable waterways are defined in Harbors and Navigation Code (H&NC) sections 36, 100-107 and Government Code section 170. DBW makes loans and provides grants, with the approval of the Governor and State Legislature and are subject to the advice and consent of the Boating and Waterways Commission, as set forth in H&NC chapters 1, 2, 3, and 4, to improve or enhance the public's access to waterways through the construction of vessel launching facilities and small craft harbors, recreational boating trails, coastal beach erosion control, and vessel equipment and operation (including vessel sanitation and pollution control), for hire vessel operator and yacht and ship broker licensing, as specified in H&NC Chapters 5 and 6, and the regulations adopted to administer these programs (Title 14 of the California Code of Regulations, Division 4, Chapters 1 and 3). DBW provides grants to local government for the removal of derelict vessels through the Abandoned Watercraft Abatement Grant Fund.

C. California Department of Fish and Game (DFG)

The DFG (the Department) is governed by the constitution and laws of the State of California, and the policies of the Fish and Game Commission (Commission). General policies and conduct of the Department are formulated by the Fish and Game Commission pursuant to Section 703, Fish and Game Code. The Fish and Game Commission carries out a quasi-judicial role as it considers the revocation, suspension and/or reinstatement of licenses and permits for violation of sport and commercial laws and regulations, pursuant to Section 746, Title 14, California Code of Regulations. Under the provisions of Sections 200-221, Fish and Game Code, the Commission is empowered to regulate the taking of fish and game to the extent and in the manner prescribed by law. The taking, processing, or use of fish, mollusks, crustaceans, kelp or other aquatic plants for commercial purposes is not affected by this article. However, the Commission regulates many aspects of commercial fishing including, but not limited to: fish reduction, ocean shrimp, herring and swordfish fisheries; kelp leases, oyster allotments (leases), shellfish cultivation and abalone regulations, and; mariculture operations. Policies adopted by the Commission are printed in an appendix to the Fish and Game Code.

The business of mariculture is governed by Division 12, Fish and Game Code and is exempt from Part 3 (commencing with Section 7600) of Division 6 and any other provision of this code relating to commercial fishing, harvesting, processing, and

marketing. Except as provided in Sections 15005, 15200, 15201, and 15202, the business of mariculture processing, distribution, and marketing is administered by the Secretary of Food and Agriculture. The stocking of aquatic organisms is allowed pursuant to Sections 15200-15202 and in adherence to Commission Policy on Introduction of Exotics.

The Department also oversees water pollution pursuant to Section 5650. Fish and Game wardens are authorized to issue citations for spills or discharges of any substance(s) considered deleterious to fish and wildlife. Violations are punishable as provided in Sections 12000-12002. Fish and Game staff report chronic (sublethal, long-term) water pollution conditions to RWQCBs and cooperate in obtaining corrections or abatements to the condition.

D. California Department of Public Health (CDPH)

The CDPH is the lead agency (the State Shellfish Program), which certifies and regulates sanitary procedures followed in the harvesting, handling, processing, storage and distribution of bivalve molluscan shellfish intended for sale for human consumption. Within CDPH the Environmental Management Branch in the Division of Drinking Water and Environmental Management regulates water quality and shellfish sanitation, at the pre-harvest stage, while the Food and Drug Branch in the Division of Food, Drug, and Radiation Safety regulates shellfish after harvest.

A shellfish growing area Management Plan is prepared and is administered by the Environmental Management Branch's Environmental Health Services Section, Pre-harvest Shellfish Unit, in cooperation with the shellfish growers, wastewater treatment plant operators, public agencies, and the other involved parties discussed in this Plan. The National Shellfish Sanitation Program (NSSP) requires that the shellfish growers, the wastewater treatment plants involved, and the applicable local and State agencies agree with the Management Plan. The "failure of any one party to agree shall constitute justification to deny the application of the *Conditional Approved* classification to the growing area." The Management Plan for commercial shellfish operations in Tomales Bay is developed pursuant to the NSSP Model Ordinance, Chapter IV (2003). The Management Plan has been prepared for adoption in accordance with the procedures set forth in Division 104, Part 6, Chapter 5 of the California Health and Safety Code section 112150 et. seq. The Management Plan sets forth all aspects of the CDPH Shellfish Program standards and procedures used to regulate commercial shellfish harvesting in Tomales Bay.

CDPH also has jurisdiction pursuant to the Porter Cologne Water Quality Control Act (California Water Code, Division 7, Chapter 24, Section 14950-14958). Under this law the RWQCB is required to form a technical advisory committee that includes CDPH. The Committee is formed for any commercial shellfish growing area that is determined to be threatened. One of the criteria for a "threatened" area is the number of days the area is closed to shellfish harvesting due to pollution threats. The Shellfish Protection Act provides that a shellfish area shall be designated as threatened if it is closed to harvesting for more than thirty days in each of three consecutive calendar years. This Act has been

in effect for Tomales Bay since 1994. As a member of the technical advisory committee, CDPH informs the members of changes in water quality relative to classification of shellfish growing areas. CDPH will assist in additional investigatory efforts by the committee if needed.

E. California State Lands Commission (SLC)

The SLC derives its authority from both the Public Resources Code and the California Code of Regulations. Public Resources Code section 6301 grants exclusive jurisdiction to the Commission over all ungranted tidelands and submerged lands owned by the State, and the beds of navigable rivers, streams, lakes, and bays. The SLC administers this authority, including the leasing of state lands for marinas, docks, and moorings, pursuant to Title 2, Division 3, Chapter 1, California Code of Regulations

F. California State Parks (CSP)

The CSP system is established in the Public Resources Code, Sections 500-514. The Public Resources Code and the California Code of Regulations call for California State Parks to

“...administer, protect, provide for recreational opportunity, and develop the State Park System; to interpret the values of the State Park System to the public; to operate the Off-Highway Motor Vehicle Recreation Program; to administer the California Historical Resources Protection Program; and to administer federal and state grants and bond funds to local agencies.”

The mission of the California Department of Parks and Recreation is to provide for the health, inspiration, and education of the people of California by helping to preserve the state’s extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. CSP’s core programs are the major activities that encompass the mission of the Department. They include Natural Resource Protection, Cultural Resource Protection, Facilities, Interpretation/Education, Public Safety and Recreation.

Title 14, the Public Resources Code, section 5003.05 provides CSP with jurisdiction on:

any granted or ungranted tidelands or submerged lands abutting property of the Department and used for recreational purposes by members of the general public in conjunction with their use of the department’s property between the boundary of the lands under the jurisdiction of the department and a line running parallel to and 1,000 feet waterward of the ordinary high water mark, so long as the rule or regulation being applied is not inconsistent with any rule or regulation of any other public agency which is applicable to the tide or submerged lands.

G. National Oceanic and Atmospheric Administration --Gulf of the Farallones National Marine Sanctuary (GFNMS)

GFNMS has been vested with the authority, in accordance with the National Marine Sanctuaries Act (NMSA) of 1972 (16 U.S.C. § 1431, et seq.), to provide comprehensive and coordinated conservation and management of 948 square nautical miles of near-shore and offshore waters of the eastern Pacific. A complete spectrum of marine habitats ranging from unique inland estuarine, to intertidal, pelagic, and deep oceanic environments is found within the Sanctuary. These productive marine environments support an abundance of living resources including: at least 36 species of marine mammals; 54 species of breeding birds; and 25 threatened or endangered species.

In 1981, NOAA determined that these offshore areas contain exceptional natural resources, and that these waters around the Farallon Islands and along the mainland coast of the Point Reyes Peninsula between Bodega Head and Rocky Point deserved special recognition, protection, and designation as a national marine sanctuary.

With certain exceptions, GFNMS regulations (15 CFR Part 922) prohibit the following activities within the Sanctuary:

- Discharges or deposits of materials;
- Dredging or otherwise altering the seabed;
- Using motorized personal watercraft (MPWC - defined as a motorboat that is less than 16 feet in length, propelled by water jet pump, and designed to be operated by a person sitting, standing, or kneeling on the vessel rather than sitting or standing inside the vessel);
- Constructing any structure other than a navigational aid (this prohibition applies to installation of moorings in the Sanctuary).

NOAA has recently proposed new regulations that would prohibit anchoring in sea grass beds, releasing introduced species, and deserting a vessel aground, at anchor, or adrift in the Sanctuary 71 Fed. Reg. 194 (October 6, 2006).

Other proposed GFNMS regulations would prohibit:

- Desertion or abandonment of vessels within the Sanctuary.
- Operating a vessel in a manner that damages seagrass.

GFNMS regulations make it unlawful for vessels to discharge untreated sewage within the boundaries of the GFNMS, which is the same as the discharge restriction (no untreated sewage) that applies to inland waters under the Clean Water Act. Title 15, CFR, Sec. 922.82(a)(2)(ii)(A). Under the National Marine Sanctuaries Act, 16 U.S.C. § 1437 (d)(1), fines of up to \$130,000 per incident per day can be assessed for violations, including illegal discharges. Under the Clean Water Act, CWA §312 (j), fines of up to \$2000 can also be imposed for illegal discharges.

H. Marin County and the Marin County Sheriff's Office

The Marin County Sheriff's Office is the primary agency within Marin County that has law enforcement authority in Tomales Bay. While primary law enforcement jurisdiction is the purview of NOAA, GFNMS, NPS, and CSP for lands within their respective park boundaries, the Sheriff's Office has authority to enforce all state and local laws within those park boundaries.

Other agencies within Marin County that have some jurisdiction over vessel-related issues in Tomales Bay include: the Marin Community Development Agency, which would permit the expansion of vessel-related facilities, and the Marin County Parks and Open Space District, which manages the Miller vessel launch ramp.

I. National Park Service (NPS) / Point Reyes National Seashore (PRNS) / Golden Gate National Recreation Area (GGNRA)

The NPS has jurisdiction over a large portion of Tomales Bay through Point Reyes National Seashore (PRNS) and the Golden Gate National Recreation Area (GGNRA). For both parks, jurisdiction is established through the park's enabling legislation (Public Law 87-657), as any water inside the park's boundary is subject to park jurisdiction. This jurisdiction means that the parks will enforce all sections of Title 36 of the Code of Federal Regulations, (*Parks, Forests, and Public Property*) on land and water within the park's boundaries. Title 36 includes provisions that address limits on overnight stays, activities that require permits, and vessel usage. Part III of Title 36 assimilates state boating regulations and U.S. Coast Guard rules codified in Title 33 of the Code of Federal Regulations, *Navigation and Navigable Waters*:

- The Seashore has the authority to institute a permit system for vessel use within the Park and prohibit some activities. [Code of Federal Regulations Title 36, Parks, Forests, and Public Property, Part 3 Boating and Water Use Activities (cited as 36 CFR Parts 1, 2, and 3)].
- The PRNS Superintendent is also allowed to close the park to moorings, or allow them under permit, control overnight stays, and prohibit residing on federal lands or waters, except under permit. Currently, kayakers camping overnight in the Park are required to obtain a permit from the Park. [36 CFR Parts 1, 2, and 3]
- The Park also has the authority to assimilate state regulations for vessel operation and registration and licensing issues; allows the NPS to enforce Coast Guard regulations on park waters and includes regulations on discharge, vessel operation, vessel requirements, and documentation. [36 CFR Part 3]
- The Park also has authority to conduct enforcement of general boating rules including types of vessels, equipment, moorings; and allows rangers to board and inspect vessels in Park waters. [36 CFR and 43 CFR Navigation and Navigable Waters]

Several federal laws designed to protect wildlife are applicable to water-based recreational uses in Tomales Bay. The Marine Mammal Protection Act of 1972 prohibits taking or harassing marine mammals. Harassment is defined as any act that has the

potential to disturb an animal by causing disruption of normal behavioral patterns including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. Brown pelicans, a federally listed endangered species, roost on islands and floats in Tomales Bay. They use Pelican Point and Hog Island as resting areas and are protected under the Endangered Species Act of 1973 and the Migratory Bird Treaty Act. Nesting Double-crested Cormorants on Hog Island are protected by the Migratory Bird Treaty Act.

The GGNRA was established by Congress in 1972 as part of a movement known as “Parks to the People.” The park has grown into the largest national park unit in an urban area in this country, and includes under its management two additional NPS units—Fort Point National Historical Site and Muir Wood National Monument. The park’s lands are located in three counties—Marin, San Francisco, and San Mateo. Upwards of 20 million people per year visit this remarkable park, located in the midst of a highly diverse metropolitan area of 7 million people.

J. State Water Resources Control Board (California Water Board) and Regional Water Quality Control Boards (RWQCBs)

The Porter-Cologne Water Quality Act (Cal. Water Code, Sections 13000 et seq.) was enacted in 1969 to preserve, enhance and restore the quality of California’s water resources, and ensure their proper allocation and efficient use of the benefit of present and future generations. The Act established the State Water Resources Control Board (the California Water Board) and nine Regional Water Quality Control Boards as the principal State agencies with the responsibility for protecting water quality in California. Under the Act, the Water Board has the ultimate authority over State water rights and water quality policy, and the regional boards oversee water quality on a day-to-day basis at the regional level by determining the beneficial uses for all water-bodies within their jurisdiction, establishing and enforcing water quality standards for surface and groundwater, and taking actions needed to maintain the standards by controlling point and non-point sources of pollution. The Shellfish Act of 1993 established the requirement that the Regional Board form a Technical Advisory Committee to investigate sources of pollution in threatened shellfish areas of the Bay.

The Porter Cologne Act and the San Francisco Bay Basin Plan prohibit the discharge of raw sewage or any waste that fails to meet waste discharge requirements into Tomales Bay. The Water Board has also adopted a Total Maximum Daily Load (TMDL) for pathogens in the Tomales Bay Watershed, which includes a prohibition of human waste being discharged into Tomales Bay. The RWQCB has the authority to investigate and regulate discharges of waste into Tomales Bay. State discharge requirements for marine areas are the same as federal requirements.

The RWQCB has the authority to investigate which discharges of waste from housevessels are inadequately regulated by local ordinance and can require a city or county to adopt an ordinance for the control of discharges of waste from an area (Porter-Cologne Act, Chapter 11, Section 13900). This process is coordinated with the CDPH

and DBW. The Water Board also has the authority to develop and adopt regional standards and require installation of sewage disposal facilities at marinas (Harbors and Navigation Code Chapter 6, Division 3, sections 776 and 778). The California Code of Regulations (Title 23, Chapter 20 and 20.1) contains standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities. The RWQCB can require a public marina operator to provide a pumpout station. For private marinas, the RWQCB must petition the Water Board to require a pumpout facility.

K. U.S. Coast Guard

U.S. Coast Guard regulations prohibit dumping of plastic refuse and garbage mixed with plastic into any waters. Recreational vessels 40 feet or more in length and equipped with a galley and berthing are required to carry and adhere to a Waste Management Plan if the vessel operates, or is certified to operate, beyond 3 nautical miles from shore under U.S. Coast Guard jurisdiction.

All vessels with installed toilets must have a Coast Guard-certified Marine Sanitation Device (MSD) if operating in U.S. navigational waters (33 CFR Part 159). Vessels with a Type I or Type II MSD must treat their sewage before discharge. For a Type I MSD, the fecal coliform count in the effluent must be no greater than 1000 per 100 milliliters of water and have no visible floating solids. For a Type II MSD, the fecal coliform count must be no greater than 200 per 100 milliliters, and suspended solids no greater than 150 milligrams per liter (33 CFR Part 159). Installed toilets that are not equipped with an MSD and that discharge raw sewage directly over the side, are illegal. Portable toilets, or “porta-potties,” are not considered installed toilets and are not subject to the MSD regulations. They are, however, subject to disposal regulations of the U.S. Coast Guard that prohibit the disposal of raw sewage within territorial waters (3 mile limit).

L. United States Environmental Protection Agency (U.S. EPA)

Regulations issued under the Federal Water Pollution Control Act of 1972 (amended 1977) require all vessels with propulsion machinery to have the capacity to retain oily mixtures on board. A bucket or bailer is suitable as a portable means for collecting oily waste on recreational vessels for proper disposal. No person may intentionally drain oil or oily waste from any source into the bilge of any vessel.

No Discharge Zones are established by the U.S. EPA. In these areas, Type I or II Marine Sanitation Devices—types of treated waste—must be sealed, and no discharge to marine waters is allowed. The state requires any vessel operating in a lake, reservoir, or fresh water impoundment that is equipped with a toilet to seal or otherwise render the unit inoperable; no discharge is permitted.

One provision of the Clean Water Act (Section 312), entitled "Marine Sanitation Devices," gives U.S. EPA the authority to designate No Discharge Zones (NDZs). A NDZ is an area of a water-body or an entire water-body into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited (40 CFR

Part 140.4). There are 11 U.S. EPA-designated No Discharge Zones in California. Tomales Bay is not one of them. The area closest to Tomales Bay that is a NDZ is Richardson Bay.

Discharges of oil or other hazardous substances are prohibited within 12 miles of the coast and within fisheries and marine preserves up to 200 miles from the coast under the Clean Water Act (40 CFR Part 110.6).

M. Local Jurisdictions

Local jurisdictions may have additional boating laws, rules, or ordinances. These local rules may include horsepower or speed limits, no wake zones, vessel type and size restrictions, and zoning restrictions for areas closed to boaters and designated traffic patterns.

N. Permitting Authority

There are extensive overlapping jurisdictions and authorities within Tomales Bay. The CCC has permitting authority over the entire Bay and those portions of the upland areas that are in the coastal zone. The SLC has leasing authority over the state-owned tidelands and submerged lands. The GFNMS has permitting authority over certain activities in the water column up to mean high tide, including activities that alter the seabed. PNRS has jurisdiction over the west side of the Tomales Bay, extending 0.25 miles into the Bay from the shoreline and under. The GGNRA has jurisdiction along the eastern shoreline out to the PNRS boundary. If there is any construction in the tidelands, Marin County Community Development Agency requires issuance of a tidelands permit.

The DFG has authority over the management of oyster lease areas. State Parks has an administrative agreement with SLC and authority 1000 feet out from State Parks Lands. The RWQCB has permitting authority for all discharges into Tomales Bay. GFNMS has permitting authority over any discharges that do not come from a Type I or Type II MSD.

O. Enforcement Authority

The primary agencies that are involved in the enforcement of county, state and/or federal regulations with respect to boating operation in Tomales Bay include the County of Marin Sheriff's Office, CSP, NPS, CCC, GFNMS and the U.S. Coast Guard. The availability of patrol officers and/or special agents to enforce the laws and regulations of Tomales Bay is limited.

The Marin County Sheriff's Office has authority to enforce county and state regulations. If a vessel is tied to a marina, the County has provisions for long-term anchored or moored vessels upon which a person or persons live and moorings. There is one boating officer for the County and if an illegal discharge is witnessed or there is a probable cause or suspicion, the officer can inspect a vessel. The County patrol vessel is usually stationed on the east side (San Francisco Bay) of the County.

The NPS has patrol vessels and operators working on Tomales Bay. CSP has one ranger on the West side of the Bay, and GFNMS has a NOAA law enforcement agent assigned to Tomales Bay. These agencies are currently working together to coordinate enforcement in Tomales Bay. The Coast Guard also has the authority to enforce regulations in Tomales Bay.

The biggest challenge for boarding or inspecting vessels for all agencies is that many of the boating laws require that a person be on board a vessel in order for it to be boarded by an enforcement officer. Many of the vessels in Tomales Bay do not have anyone on board on a regular basis. Complaints are usually responded to by the agency to which the complaint was made. The agencies are working to attempt joint patrol operations on the Bay for both “routine” and specific enforcement.

In terms of the discharge or release of pollutants or species that can have adverse effects on water quality or the overall health of the Bay, several agencies have jurisdiction and enforcement authority to stop or prevent such activities. The RWQCBs, the DFG, the U.S. Coast Guard, GFNMS, and the Marin County Sheriff’s Department have various authorities related to such activities in Tomales Bay.

The CCC’s enforcement tools include cease and desist and/or restoration orders and filing complaint(s) for civil penalties. Cease and desist orders are used by the Commission to halt ongoing violations, to order removal of unpermitted development, and to force developers to comply with the permit process; restoration orders are used to bring about the removal of unpermitted development and/or restoration of damaged coastal resources.

